

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
07-CA-296644Date Filed
5-25-2022**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer MKX Oil Company		b. Tel. No. (810) 931-0254
		c. Cell No.
		f. Fax. No.
d. Address (Street, city, state, and ZIP code) 1356 Imlay City Rd MI Lapeer 48446	e. Employer Representative (b) (6), (b) (7)(C) [REDACTED]	g. e-mail (b) (6), (b) (7)(C)@mkxoilco.com
		h. Number of workers employed 60
i. Type of Establishment (factory, mine, wholesaler, etc.)	j. Identify principal product or service Cannabis	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3,1 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

--See additional page--

(b) (6), (b) (7)(C) party filing charge (if labor organization, give full name, including local name and number)

4a. Address (Street and number, city, state, and ZIP code) (b) (6), (b) (7)(C) [REDACTED]	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No.
	4e. e-mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements
(b) (6), (b) (7)(C) are true to the best of my knowledge and belief.

(signature of representative or person making charge)

(Print/type name and title or office, if any)

(b) (6), (b) (7)(C)
Address [REDACTED]

Date 05/25/2022 12:16:19 PM

Tel. No. (b) (6), (b) (7)(C)
Office, if any, Cell No.
Fax No.
e-mail (b) (6), (b) (7)(C)

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(3)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2022

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages and/or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7) /2022



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 7

Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

Agency Website: www.nlrb.gov
Telephone: (313)226-3200
Fax: (313)226-2090



Download
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Mobile App

May 31, 2022

(b) (6), (b) (7)(C)

Re: MKX Oil Company
Case 07-CA-296644

Dear (b) (6), (b) (7)(C):

The charge that you filed in this case on May 25, 2022 has been docketed as case number 07-CA-296644. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Matthew E. Ritzman whose telephone number is (313)335-8069. If this Board agent is not available, you may contact Deputy Regional Attorney Erikson C.N. Karmol whose telephone number is (313)335-8025.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody

or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Qualifying for Backpay: We are just beginning to investigate your charge and no decision has been made regarding the merits of your case. However, it is important that employees who might be entitled to backpay because of loss of employment understand their obligation to look for work in order to qualify for backpay if your case has merit. Accordingly,

we urge you to promptly provide the Board agent with the names and addresses of all employees who might be entitled to backpay as a result of the charge you filed.

If backpay is due to an employee, the Board requires that the employee offset the backpay by promptly beginning to look for another job in the same or similar line of work. The Board has held that a reasonably diligent employee should begin searching for interim work within 2 weeks after the employee's termination or layoff or a refusal to hire the employee. If an employee cannot establish that he or she actively tried to mitigate his or her losses, the amount of money owed to the employee might be reduced.

Employees who might be owed backpay should keep careful records of when and where they have sought employment and of job search expenses such as mileage, parking, and copying resumes. Specifically, they should keep a record of each time they attempt to find work, including the date, name of the company, name of person with whom they spoke, the position sought, and the response received.

Very truly yours,

A handwritten signature in black ink that reads "Elizabeth Kerwin". The signature is written in a cursive style with a large, sweeping loop at the end.

Elizabeth Kerwin
Regional Director



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 7

Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

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May 31, 2022

(b) (6), (b) (7)(C)

MKX Oil Company
1356 Imlay City Road
Lapeer, MI 48446

Re: MKX Oil Company
Case 07-CA-296644

Dear (b) (6), (b) (7)(C):

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

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Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in dark ink that reads "Elizabeth Kerwin". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Elizabeth Kerwin
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

Matthew E. Ritzman **QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

MKX Oil Company

CASE NUMBER

07-CA-296644

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

YES

NO

A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$ _____

B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____

C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____

D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____

E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____

F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____

G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____

H. Gross Revenues from all sales or performance of services (Check the largest amount)

☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.

I. Did you begin operations within the last 12 months? If yes, specify date: _____

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MKX OIL COMPANY

Charged Party

and

(b) (6), (b) (7)(C)

Charging Party

Case 07-CA-296644

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 31, 2022, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

(b) (6), (b) (7)(C)

MKX Oil Company
1356 Imlay City Road
Lapeer, MI 48446

(b) (6), (b) (7)(C)

May 31, 2022

Date

Carol A. Koper, Designated Agent of
NLRB

Name
/s/ Carol A. Koper

Signature

1st Amended Charge

FORM NLRB-501
(3-21)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
07-CA-296644 Date Filed
November 18, 2022

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer MKX LLC; Berry Green Management, Inc; MC Berry Management Inc.		b. Tel. No. (810) 931-0254
		c. Cell No.
		f. Fax. No.
d. Address (Street, city, state, and ZIP code) 1356 Imlay City Rd MI Lapeer 48446	e. Employer Representative (b) (6), (b) (7)(C) [REDACTED]	g. e-mail (b) (6), (b) (7)(C)@mkxoilco.com
		h. Number of workers employed 60
i. Type of Establishment (factory, mine, wholesaler, etc.)	j. Identify principal product or service Cannabis	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3,1 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

--See additional page--

(b) (6), (b) (7)(C) party filing charge (if labor organization, give full name, including local name and number)

4a. Address (Street and number, city, state, and ZIP code) (b) (6), (b) (7)(C) [REDACTED]	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No.
	4e. e-mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

(b) (6), (b) (7)(C) [REDACTED]	RATION e charge and that the statements knowledge and belief. (b) (6), (b) (7)(C) (Print/type name and title or office, if any)	Tel. No. (b) (6), (b) (7)(C)
		Office, if any, Cell No.
		Fax No.
		e-mail (b) (6), (b) (7)(C)
Address (b) (6), (b) (7)(C) [REDACTED]		Date

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(3)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C) 2022

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages and/or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C) 2022



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 7
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December 8, 2022

(b) (6), (b) (7)(C)

MKX Oil Company
1330 Imlay City Rd
Lapeer, MI 48446

Re: MKX LLC, Berry Green Management, Inc.
and MC Berry Management, Inc.
Case 07-CA-296644

Dear (b) (6), (b) (7)(C):

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Attorney Matthew E. Ritzman whose telephone number is (313)335-8069. If the agent is not available, you may contact Regional Attorney ERIKSON C.N. KARMOL whose telephone number is (313)335-8025.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the

December 8, 2022

Agency's web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in dark ink that reads "Elizabeth Kerwin" with a large, sweeping flourish at the end.

ELIZABETH KERWIN
Regional Director

Enclosure: Copy of first amended charge

cc: Darlene Haas Awada, Esq.
Ogletree Deakins Nash Smoak & Stewart,
PLLC
34977 Woodward Ave Ste 300
Birmingham, MI 48009

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MKX OIL COMPANY

Charged Party

and

(b) (6), (b) (7)(C)

Charging Party

Case 07-CA-296644

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on December 8, 2022, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

(b) (6), (b) (7)(C)

MKX Oil Company
1356 Imlay City Road
Lapeer, MI 48446

Darlene Haas Awada, Esq.
Ogletree Deakins Nash Smoak & Stewart,
PLLC
34977 Woodward Ave Ste 300
Birmingham, MI 48009

December 8, 2022

Date

Ann O'Neal-Jones, Designated Agent of
NLRB

Name
/s/

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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Agency Website: www.nlr.gov
Telephone: (313)226-3200
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December 8, 2022

(b) (6), (b) (7)(C)

Re: MKX LLC, Berry Green Management, Inc.
and MC Berry Management, Inc.
Case 07-CA-296644

Dear (b) (6), (b) (7)(C)

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Attorney Matthew E. Ritzman whose telephone number is (313)335-8069. If the agent is not available, you may contact Regional Attorney ERIKSON C.N. KARMOL whose telephone number is (313)335-8025.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to

December 8, 2022

comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in black ink that reads "Elizabeth Kerwin". The signature is written in a cursive style with a large, sweeping loop at the end.

ELIZABETH KERWIN
Regional Director

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

MKX Oil Company

and

(b) (6), (b) (7)(C)

CASE 07-CA-296644
07-CA-296281
07-CA-296276

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
MKX Oil Company


IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Darlene Haas Awada, Esq.
MAILING ADDRESS: Ogletree Deakins, 34977 Woodward Ave., Ste 300, Birmingham, MI 48009
E-MAIL ADDRESS: darlene.awada@ogletree.com
OFFICE TELEPHONE NUMBER: (248) 723-6128
CELL PHONE NUMBER: (248) 606-0906 FAX: 248-283-2925
SIGNATURE: 
DATE: (Please sign in ink.) June 9, 2022

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

**Cases: 07-CA-296276
07-CA-296281
07-CA-296644**

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

(b) (6), (b) (7)(C)

MKX Oil Company
1330 Imlay City Rd
Lapeer, MI 48446

Darlene Haas Awada Esq., Attorney
Ogletree Deakins Nash Smoak & Stewart,
PLLC
34977 Woodward Avenue, Suite 300
Birmingham, MI 48009

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

BERRY GREEN MANAGEMENT, INC.

Respondent

and

Case 07-CA-296276

Case 07-CA-296281

Case 07-CA-296644

(b) (6), (b) (7)(C), an Individual

**Charging Party (b) (6),
(b) (7)(C)**

and

(b) (6), (b) (7)(C), an Individual

**Charging Party (b) (6),
(b) (7)(C)**

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid any unnecessary costs or delay, IT IS ORDERED THAT Case 07-CA-296276 and Case 07-CA-296281, which are based on charges filed by Charging Party (b) (6), (b) (7)(C) and Case 07-CA-296644, which is based on a charge filed by Charging Party (b) (6), (b) (7)(C) (collectively, Charging Parties) against Respondent are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the Board and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 07-CA-296276 was filed by Charging Party (b) (6), (b) (7)(C) on May 23, 2022, and a copy was served on Respondent by U.S. mail on May 24, 2022.
- (b) The first amended charge in Case 07-CA-296276 was filed by Charging Party (b) (6), (b) (7)(C) on November 18, 2022, and a copy was served on Respondent by U.S. mail on the same date.

(d) The charge in Case 07-CA-296281 was filed by Charging Party (b) (6), (b) (7)(C) on May 23, 2022, and a copy was served on Respondent by U.S. mail on May 24, 2022.

(e) The first amended charge in Case 07-CA-296281 was filed by Charging Party (b) (6), (b) (7)(C) on November 14, 2022, and a copy was served on Respondent by U.S. mail on the same date.

(f) The charge in Case 07-CA-296644 was filed by Charging Party (b) (6), (b) (7)(C) on May 25, 2022, and a copy was served on Respondent by U.S. mail on May 31, 2022.

(g) The first amended charge in Case 07-CA-296644 was filed by Charging Party (b) (6), (b) (7)(C) on November 18, 2022, and a copy was served on Respondent by U.S. mail on the same date.

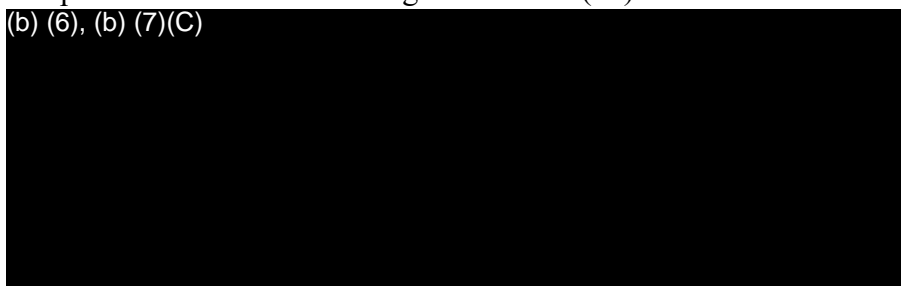
2. At all material times, Respondent has been a corporation with an office and place of business in Lapeer, Michigan (Lapeer facility) and has operated a marijuana processing facility.

3. During the calendar year ending December 31, 2022, Respondent, in conducting its business operations described above in paragraph 2, purchased and received at its Lapeer, Michigan facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.

4. At all material times, Respondent, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, the following individuals held the positions opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

(b) (6), (b) (7)(C)



6. About May 19, 2022, Respondent, by (b) (6), (b) (7)(C) at Respondent's Lapeer facility, interrogated its employees by asking them to identify other employees regarding their complaints about terms and conditions of employment.

7. About April 2022, Respondent, by (b) (6), (b) (7)(C), at Respondent's Lapeer facility, issued an overly broad oral directive that employees were not permitted to discuss their pay with other employees.

8. During the six months prior to the filing of the charges in this proceeding, Respondent has maintained the following overly broad or otherwise unlawful rules in its Confidentiality, Non-Solicitation and Non-Compete Agreement:

- (a) **Provision 2(a) – Non-Solicitation.** Employee represents, warrants, covenants and agrees that during the Term, he or she will not (i) recruit or solicit any employee, contractor or sales agent of Employers to discontinue such employment or engagement; seek to employ or retain any such employee, contractor or agent; or cause any business, person, firm, or corporation which competes directly with Employers to seek or solicit the employment or retention of any such employee, contractor or agent; or (ii) solicit or encourage any person or any business, firm, corporation or other entity which has a business or commercial relationship with Employers to seek to discontinue such relationship or reduce the volume or scope of such relationship.
- (b) **Provision 1 - Non-Competition.** Employee represents, warrants, covenants, and agrees that during the Term, he or she will not, directly or indirectly, either:
- a. have any interest in (whether as founder, proprietor, officer, director or otherwise) or enter the employment of any individual, partnership, joint venture, corporation or other business entity directly engaged in the Business in the State of Michigan.
 - b. be engaged as an independent contractor or any individual, partnership, joint venture, corporation, or other business entity directly engaged in the Business in the State of Michigan;
 - c. solicit, divert or take away, or attempt to solicit, divert, or take away any customer or the business of any customer with respect to the product or services of [the Employer] or its Affiliates;
 - d. attempt to cause any customer to refrain, in any respect, from maintaining or acquiring any product or service provided or offered by [the Employer].

...

and **Provision 4 – Reasonable Restrictions.** The term of this Agreement shall be the term of Employee's employment with Employers and for two (2) years following Employee's termination, resignation, or completion of Employee's employment with one or more Employers. The geographic scope shall be the State of Michigan. The Parties agree that the duration, activities restricted, and geographic scope of the provisions set forth in this Agreement are reasonable and are reasonably necessary to protect the business and good will of the Parties. Employee acknowledges and agrees that Employers have invested significant time and money to develop the production methods, customer and vendor lists and relationships, and related

information with respect to its products and the Michigan market for cannabis products and would be substantially injured if such information became available to competitors or the public. If any court determines that the duration, activities restricted or geographic scope or any combination thereof, are unreasonable and that such provision is to that extent unenforceable, the Parties agree that the provision will remain in full force and effect for the greatest time-period, with respect to the broadest type of activities described, and in the greatest geographic area that would not render it unenforceable.

- (c) **Provision 6 – Non-Disparagement.** Employee agrees and covenants that he/she will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments or statements concerning the Employers or their businesses, or any of its employees, officers, and existing and prospective customers, suppliers, investors, and other associated third parties. This Section 6 does not, in any way, restrict or impede the Employee from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by law, regulation or order. Employee shall promptly provide written notice of any such order to MCB.

9. About May 19, 2022, Respondent's employees, Charging Party (b) (6), (b) (7)(C) and Charging Party (b) (6), (b) (7)(C) engaged in concerted activities with other employees for the purposes of mutual aid and protection, by discussing complaints about employees' terms and conditions of employment at the Employer's Lapeer facility and bringing those concerns to Respondent.

10. (a) About (b) (6), (b) (7)(C), 2022, Respondent suspended Charging Party (b) (6), (b) (7)(C)
- (b) About (b) (6), (b) (7)(C), 2022, Respondent suspended Charging Party (b) (6), (b) (7)(C)
- (c) About (b) (6), (b) (7)(C), 2022, Respondent discharged Charging Party (b) (6), (b) (7)(C)
- (d) About (b) (6), (b) (7)(C), 2022, Respondent discharged Charging Party (b) (6), (b) (7)(C)

11. Respondent engaged in the conduct described above in paragraph 10 because the Charging Parties engaged in the conduct described above in paragraph 9, and to discourage employees from engaging in these or other concerted activities.

12. Respondent engaged in the conduct described above in paragraph 10(a) and (c) because Respondent believed Charging Party ^{(b) (6), (b) (7)(C)} formed, joined, or assisted a Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

13. By the conduct described above in paragraphs 6, 7, 8, 10, and 11, Respondent has been interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

14. By the conduct described above in paragraph 10(a), 10(c), and 12, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from:

(a) Engaging in the conduct described in paragraphs 6, 7, 8, 10 and 11, or in any like or related manner interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

(b) Engaging in the conduct described above in paragraphs 10(a), 10(c), and 12, or in any like or related manner discriminating against employees with regard to hire or terms or conditions of employment in violation of Section 8(a)(1) and (3) of the Act.

2. Take the following affirmative action:

(a) Rescind the overly broad oral directive described above in paragraph 7 and advise employees in writing of such rescission.

(b) Rescind the Confidentiality, Non-Solicitation and Non-Compete Agreements that were executed, enforced, or in effect at any time since November 24, 2021, and advise each employee and former employee, individually, in writing, that the Agreement has been rescinded and they are released from its obligations.

(c) Rescind in writing any and all directives, disciplines, cease and desist letters, or other actions issued to employees or former employees as a result of the enforcement of the Confidentiality, Non-Solicitation and Non-Compete Agreement described in paragraph 7 at any time since November 24, 2021, and notify such employees or former employees, in writing, that this has been done and that the disciplines, directives, cease and desist letters, or other actions will not be used against them in any way.

(d) Make whole those employees and former employees who suffered financial loss due to the discipline, directive, cease and desist letter, or other action imposed relating to the Confidentiality, Non-Solicitation and Non-Compete Agreements that were issued, enforced, or otherwise in effect at any time since November 24, 2021, including direct or foreseeable pecuniary harms suffered, plus interest computed in accordance with current Board policy, plus reasonable search-for-work and interim employment expenses.

(e) Offer each of the Charging Parties immediate reinstatement to their former positions, or if their positions no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed if not for the discrimination against them.

(f) Make whole each of the Charging Parties for any loss of earnings and benefits, including direct or foreseeable pecuniary harms they suffered as a result of the discrimination against them by payment of backpay, plus reasonable search-for-work and interim employment expenses and compensate them for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one year, with interest computed in accordance with Board policy. The General Counsel further seeks as part of the remedy as a result of the discrimination against them, that Respondent be required to submit to the Regional Director the W-2 documents reflecting backpay paid to each of the Charging Parties.

(g) Expunge from its files and records any reference to the suspensions and discharges of each of the Charging Parties, and notify the employees, individually, in writing, that it has done so, and that the suspensions and discharges will not be used against them in the future in any way.

(h) Pay Charging Party ^{(b) (6), (b) (7)(C)} and/or Charging Party ^{(b) (6), (b) (7)(C)} front pay, should either or both waive their individual right to reinstatement to their former position.

(i) Schedule with Region 7 of the Board a mandatory training session(s), to be conducted by a Board agent, for all Respondent supervisors, managers, and agents covering the rights guaranteed to employees under Section 7 of the Act and submit an attendance list to the Regional Director of Region 7 within 7 days of the training session(s).

(j) Schedule during working time, with Region 7 of the Board, a mandatory training session(s) for all Respondent non-supervisory, non-managerial employees, to be conducted by a Board agent, covering the rights guaranteed to employees under Section 7 of the Act and submit an attendance list to the Regional Director of Region 7 within 7 days of the training session(s).

(k) Hold a meeting or meetings during worktime, scheduled to ensure the widest possible attendance of employees, at which a responsible management official of Respondent will disseminate signed copies of the Notice and the Board's Explanation of Employee Rights to all attendees and read the Notice to Employees aloud by a high-ranking management official of the Respondent in the presence of a Board Agent.

(1) Post appropriate notices for a 90 consecutive day period in all of Respondent's facilities in all places where notices to employees are customarily posted.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before** February 3, 2023, **or postmarked on or before February 2, 2023.** Respondent also must serve a copy of the answer on each of the other parties.

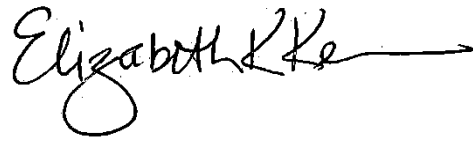
The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on May 3, 2023, 10:00 AM, at 477 Michigan Avenue, Room - 5-200, Detroit, MI 48226, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: January 20, 2023

A handwritten signature in black ink, appearing to read "Elizabeth Kerwin", with a long horizontal flourish extending to the right.

Elizabeth Kerwin, Regional Director
National Labor Relations Board, Region 07
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

BERRY GREEN MANAGEMENT, INC.

Respondent

and

**Case 07-CA-296276
Case 07-CA-296281
Case 07-CA-296644**

(b) (6), (b) (7)(C) , an Individual

Charging Party (b) (6),

And

(b) (6), (b) (7)(C) , an Individual

Charging Party (b) (6),

ANSWER AND DEFENSES

Now comes Respondent Berry Green Management, Inc. (“Berry Green” or “Respondent”), pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board (“NLRB”), and by and through their undersigned counsel, answers the Consolidated Complaint (“Complaint”) and asserts affirmative and other defenses thereto as follows:

1. (a) The charge in Case 07-CA-296276 was filed by Charging Party (b) (6), (b) (7)(C) on May 23, 2022, and a copy was served on Respondent by U.S. mail on May 24, 2022.

ANSWER: In Answer to Complaint Paragraph 1(a), Respondent admits it received a Charge in Case 07-CA-296276, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(a) of the Complaint, and, therefore, neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

(b) The first amended charge in Case 07-CA-296276 was filed by Charging Party (b) (6), (b) (7)(C) on November 18, 2022, and a copy was served on Respondent by U.S. mail on the same date.

ANSWER: In Answer to Complaint Paragraph 1(b), Respondent admits it received a first amended Charge in Case 07-CA-296276, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(a) of the Complaint, and, therefore, neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

(d)¹ The charge in Case 07-CA-296281 was filed by Charging Party (b) (6), (b) (7)(C) on May 23, 2022, and a copy was served on Respondent by U.S. mail on May 24, 2022.

ANSWER: In Answer to Complaint Paragraph 1(d), Respondent admits it received a Charge in Case 07-CA-296281, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(d) of the Complaint, and, therefore, neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

(e) The first amended charge in Case 07-CA-296281 was filed by Charging Party (b) (6), (b) (7)(C) on November 14, 2022, and a copy was served on Respondent by U.S. mail on the same date.

ANSWER: In Answer to Complaint Paragraph 1(e), Respondent admits it received a Charge in Case 07-CA-296281, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(e) of the Complaint, and, therefore, neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

(f) The charge in Case 07-CA-296644 was filed by Charging Party (b) (6), (b) (7)(C) on May 25, 2022, and a copy was served on Respondent by U.S. mail on May 31, 2022.

ANSWER: In Answer to Complaint Paragraph 1(f), Respondent admits it received a Charge in Case 07-CA-296281, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(f) of the Complaint, and, therefore, neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

(g) The first amended charge in Case 07-CA-296644 was filed by Charging Party (b) (6), (b) (7)(C) on November 18, 2022, and a copy was served on Respondent by U.S. mail on the same date.

ANSWER: In Answer to Complaint Paragraph 1(g), Respondent admits it received a Charge in Case 07-CA-296281, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(g) of the Complaint, and, therefore, neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

2. At all material times, Respondent has been a corporation with an office and place of business in Lapeer, Michigan (Lapeer facility) and has operated a marijuana processing facility.

ANSWER: In Answer to Complaint Paragraph 2, with the understanding that “at all material times” refers to the dates of the Complaint allegations, Respondent admits the allegations in Paragraph 2.

3. During the calendar year ending December 31, 2022, Respondent, in conducting its business operations described above in paragraph 2, purchased and received at its Lapeer,

¹ There is no Paragraph 1(c) alleged in the Consolidated Complaint.

Michigan facility goods valued in excess of \$50,000 directly from points outside the State of Michigan.


ANSWER: In Answer to Complaint Paragraph 3, with the understanding that “at all material times” refers to the dates of the Complaint allegations, Respondent admits the allegations in Paragraph 3.

4. At all material times, Respondent, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: In Answer to Complaint Paragraph 4, with the understanding that “at all material times” refers to the dates of the Complaint allegations, Respondent admits the allegations in Paragraph 4.

5. At all material times, the following individuals held the positions opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

(b) (6), (b) (7)(C)



ANSWER: In Answer to Complaint Paragraph 5, Respondent admits that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) are supervisors within the meaning of Section 2(11) of the Act, and hold the titles set forth in Paragraph 5, although (b) (6), (b) (7)(C) name is misspelled, and is corrected herein. Respondent further states that (b) (6), (b) (7)(C) names are spelled incorrectly in Paragraph 5 and are corrected herein. In further Answer, Respondent states that during some portions of the time period set forth in the Complaint, (b) (6), (b) (7)(C) were/are supervisors within the meaning of Section 2(11) of the Act.

In further response, Respondent admits that (b) (6), (b) (7)(C) may have acted as agents of Respondent, but only if acting within the scope of their authority. Respondent does not admit that every action that may have been taken by these individuals would have been within their respective scope of authority, and to the extent that they were not, denies those allegations within the meaning of Section 2(13) of the Act. All other allegations in paragraph 5 are denied.

6. About (b) (6), (b) (7)(C), 2022, Respondent, by (b) (6), (b) (7)(C), at Respondent's Lapeer facility, interrogated its employees by asking them to identify other employees regarding their complaints about terms and conditions of employment.

ANSWER: In Answer to Complaint Paragraph 6, the allegations are denied.

7. About (b) (6), (b) (7)(C) 2022, Respondent, by (b) (6), (b) (7)(C) at Respondent's Lapeer facility, issued an overly broad oral directive that employees were not permitted to discuss their pay with other employees.

ANSWER: In Answer to Complaint Paragraph 7, the allegations are denied.

8. During the six months prior to the filing of the charges in this proceeding, Respondent has maintained the following overly broad or otherwise unlawful rules in its Confidentiality, Non-Solicitation and Non-Compete Agreement:

- (a) **Provision 2(a) – Non-Solicitation.** Employee represents, warrants, covenants and agrees that during the Term, he or she will not (i) recruit or solicit any employee, contractor or sales agent of Employers to discontinue such employment or engagement; seek to employ or retain any such employee, contractor or agent; or cause any business, person, firm, or corporation which competes directly with Employers to seek or solicit the employment or retention of any such employee, contractor or agent; or (ii) solicit or encourage any person or any business, firm, corporation or other entity which has a business or commercial relationship with Employers to seek to discontinue such relationship or reduce the volume or scope of such relationship.
- (b) **Provision 1 - Non-Competition.** Employee represents, warrants, covenants, and agrees that during the Term, he or she will not, directly or indirectly, either:
 - a. have any interest in (whether as founder, proprietor, officer, director or otherwise) or enter the employment of any individual, partnership, joint venture, corporation or other business entity directly engaged in the Business in the State of Michigan.
 - b. be engaged as an independent contractor or any individual, partnership, joint venture, corporation, or other business entity directly engaged in the Business in the State of Michigan;
 - c. solicit, divert or take away, or attempt to solicit, divert, or take away any customer or the business of any customer with respect to the product or services of [the Employer] or its Affiliates;

d. attempt to cause any customer to refrain, in any respect, from maintaining or acquiring any product or service provided or offered by [the Employer].

...

and **Provision 4 – Reasonable Restrictions.** The term of this Agreement shall be the term of Employee's employment with Employers and for two (2) years following Employee's termination, resignation, or completion of Employee's employment with one or more Employers. The geographic scope shall be the State of Michigan. The Parties agree that the duration, activities restricted, and geographic scope of the provisions set forth in this Agreement are reasonable and are reasonably necessary to protect the business and good will of the Parties. Employee acknowledges and agrees that Employers have invested significant time and money to develop the production methods, customer and vendor lists and relationships, and related information with respect to its products and the Michigan market for cannabis products and would be substantially injured if such information became available to competitors or the public. If any court determines that the duration, activities restricted or geographic scope or any combination thereof, are unreasonable and that such provision is to that extent unenforceable, the Parties agree that the provision will remain in full force and effect for the greatest time-period, with respect broadest type of activities described, and in the greatest geographic area that would not render it unenforceable.

- (c) **Provision 6 – Non-Disparagement.** Employee agrees and covenants that he/she will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments or statements concerning the Employers or their businesses, or any of its employees, officers, and existing and prospective customers, suppliers, investors, and other associated third parties. This Section 6 does not, in any way, restrict or impede the Employee from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by law, regulation or order. Employee shall promptly provide written notice of any such order to MCB.

ANSWER: In Answer to Complaint Paragraph 8, the allegations are denied.

9. About (b) (6), (b) (7)(C) 2022, Respondent's employees, Charging Party (b) (6), (b) (7)(C) and Charging Party (b) (6), (b) (7)(C) engaged in concerted activities with other employees for the purposes of

mutual aid and protection, by discussing complaints about employees' terms and conditions of employment at the Employer's Lapeer facility and bringing those concerns to Respondent.

ANSWER: In Answer to Complaint Paragraph 9, the allegations are denied.

10. (a) About (b) (6), (b) (7)(C), 2022, Respondent suspended Charging Party (b) (6), (b) (7)(C)
- (b) About (b) (6), (b) (7)(C), 2022, Respondent suspended Charging Party (b) (6), (b) (7)(C)
- (c) About (b) (6), (b) (7)(C), 2022, Respondent discharged Charging Party (b) (6), (b) (7)(C)
- (d) About (b) (6), (b) (7)(C), 2022, Respondent discharged Charging Party (b) (6), (b) (7)(C)

ANSWER: In Answer to Complaint Paragraph 10(a) through (d), Respondent admits the allegations.

11. Respondent engaged in the conduct described above in paragraph 10 because the Charging Parties engaged in the conduct described above in paragraph 9, and to discourage employees from engaging in these or other concerted activities.

ANSWER: In Answer to Complaint Paragraph 11, Respondent denies the allegations.

12. Respondent engaged in the conduct described above in paragraph 10(a) and (c) because Respondent believed Charging Party (b) (6), (b) (7)(C) formed, joined, or assisted a Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

ANSWER: In Answer to Complaint Paragraph 12, Respondent denies the allegations.

13. By the conduct described above in paragraphs 6, 7, 8, 10, and 11, Respondent has been interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

ANSWER: In Answer to Complaint Paragraph 13, Respondent denies the allegations.

14. By the conduct described above in paragraph 10(a), 10(c), and 12, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

ANSWER: In Answer to Complaint Paragraph 14, Respondent denies the allegations.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER: In Answer to Complaint Paragraph 15, Respondent denies the allegations.

IN further Answer, Respondent denies both that it has engaged in any unfair labor practices and that the General Counsel is entitled to any relief whatsoever.

Respondent denies that the General Counsel is entitled to the specific relief pled in the Complaint, including: rescission of any directive; rescission of any Confidentiality, Non-Solicitation, and Non-Compete Agreements; rescission of any disciplines, cease and desist letters, or other actions issued to employees or former employees as a result of the enforcement of the Confidentiality, Non-Solicitation, and Non-Compete Agreement; a make whole remedy to employees and former employees due to any discipline, directive, cease and desist, or other action imposed relating to the Confidentiality, Non-Solicitation, and Non-Compete Agreements; offers of reinstatement to the Charging Parties; a make whole remedy for the Charging Parties; any make whole remedy that includes “direct or foreseeable pecuniary harms;” any payment of front pay to a Charging Party for waiving reinstatement; mandatory training for all Respondent supervisors, managers, and agents to be conducted by a Board agent; mandatory training for all non-supervisory, non-managerial employees to be conducted by a Board agent; dissemination of a Notice and the Board’s Explanation of Employee’s Right to employees at a meeting with the Notice to Employees read aloud to by a high-ranking management official in the presence of a Board agent; the posting of notices for 90 consecutive days.

Respondent denies each and every allegation of the Complaint unless specifically admitted above.

DEFENSES

Respondent asserts the following defenses to the Complaint without admitting that any bear the burden of proof for the defenses asserted:

1. Some or all of the claims against Respondent fail because the acts allegedly taken by Respondent are not unlawful under the National Labor Relations Act (“NLRA”).
2. Some or all of the claims against Respondent fail because they do not state a claim for which relief may be granted under the NLRA.
3. The Complaint alleges allegations not contained in the Charges or First Amended Charges.

4. The Complaint allegations and sought remedy exceed the authority Congress intended to confer upon the agency.

5. The General Counsel's position with regard to the allegations in the Complaint and proposed remediation is contrary to extant law under the NLRA and the U.S. Constitution, and is, thus, a violation of Respondent's due process.

6. The proposed remediation is fatally overbroad, punitive, beyond the Board's authority, and plainly illogical.

7. To the extent the Complaint's allegations and/or its proposed remediation are (is) predicated, in any way, on any potential change in extant Board law, such retroactive application would be manifestly unfair, unwarranted, a violation of due process, and unenforceable.

8. Respondent asserts all other relevant affirmative defenses described in NLRB Regulations and the Federal Rules of Civil Procedure by reference and reserves the right to supplement its affirmative defenses as Respondent obtains additional information regarding the allegations in the Complaint.

9. Respondent will rely upon all proper defenses, affirmative or otherwise, lawfully available that may be disclosed by evidence and reserves the right to amend this Answer to state such other affirmative and additional defenses and/or otherwise supplement this Answer upon discovery of facts or evidence rendering such action appropriate.

WHEREFORE, Respondent denies that it engaged in any act which violated the National Labor Relations Act. Respondent requests that the Complaint be dismissed in its entirety with prejudice and that Respondent be awarded their costs and attorneys' fees in connection with this matter, and other relief as deemed appropriate.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, PLLC

/s/ *Darlene Haas Awada*

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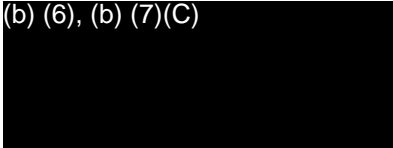
Counsel for Berry Green Management, Inc.

Dated: February 2, 2023

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within **ANSWER AND DEFENSES** has been filed and served electronically on February 2, 2023 as follows:

(b) (6), (b) (7)(C)



OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, PLLC

/s/ Darlene Haas Awada

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

BERRY GREEN MANAGEMENT, INC.

Respondent

and

(b) (6), (b) (7)(C), an Individual

**Cases 07-CA-296276
07-CA-296281
07-CA-296644**

**Charging Party (b) (6),
(b) (7)(C)**

and

(b) (6), (b) (7)(C), an Individual

**Charging Party (b) (6),
(b) (7)(C)**

**ORDER APPROVING CONDITIONAL WITHDRAWAL REQUESTS, DISMISSING
CONSOLIDATED COMPLAINT, AND WITHDRAWING NOTICE OF HEARING**

On January 20, 2023, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in the above-captioned matter. On May 1, 2023, the Charging Parties requested conditional withdrawal of their respective charges; and

Having duly considered the requests for conditional withdrawal of the charges, it appears that further formal proceedings are not necessary to effectuate the purposes of the Act;

IT IS ORDERED, pursuant to Section 102.9 of the Board's Rules and Regulations, that the withdrawal of the charges is approved conditioned upon the performance of the undertakings in the private settlement agreement between the parties, with the proviso that, upon application by either of the Charging Parties, supported by evidence that these undertakings have not been complied with, the charges are subject to reinstatement for further proceedings; and

IT IS FURTHER ORDERED that the Consolidated Complaint is dismissed and the Notice of Hearing is withdrawn.

Dated: May 2, 2023

A handwritten signature in dark ink, reading "Elizabeth Kerwin". The signature is fluid and cursive, with a large, sweeping flourish at the end of the name.

Elizabeth Kerwin, Regional Director
National Labor Relations Board, Region 07
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226